IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6729 of 1999

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL RAILWAY MANAGER & 1 - Petitioner(s)

Versus

SHANKAR DALSUKH C/O GENERAL WORKMEN UNION - Respondent(s)

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Appearance :
MR NS SHEVADE for Petitioner No(s).: 1,2.

MR YV SHAH for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2005

ORAL JUDGMENT

1. This petition is directed against award dated 7.4.1999 passed by the Industrial Tribunal, Baroda, in Reference (ITC) No.1/95 whereby the Tribunal partly allowed the reference and directed the petitioner to reinstate the respondent on his original post with continuity of service along with 70% back wages.

2. The short facts of the case are that the respondent was serving with the petitioner. Since the respondent remained absent unauthorisedly a charge sheet was issued and after conducting disciplinary proceedings he was dismissed from service. The respondent therefore raised a dispute which was referred to Industrial Tribunal.The Tribunal, after hearing the parties, passed the award as stated above.

3. On 29.3.2000 this Court passed the following order:

> Heard learned advocates for the respective parties. Rule. Mr. Y.B. Shah, learned advocate waives service of rule on behalf of respondent.
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> Ad-interim relief in terms of para 11(d) on condition that petitioner is directed to reinstate the workman in service with continuity and also to pay full wages from 7thApril 1999, till the date of actual reinstatement in service within the period of four weeks from today. Notice as to interim relief returnable on 26th April 2000."

4. The aforesaid ad interim relief was confirmed by order dated 3.7.2000. Thus the respondent has already been reinstated and therefore I am of the opinion that the said position may not be disturbed at this stage. Even otherwise the Industrial Tribunal has given cogent and convincing reasons for grant of reinstatement and there is no reason to interfere with the same.

5. Learned counsel for the petitioner submitted that the Industrial Court has committed an error in awarding back wages as no reasons are assigned for grant of back wages. He submitted that when the workman has not worked during the period

in question there is no justification for award of back wages.

6. As a result of hearing and perusal of the record it is found that the Industrial Court has mechanically awarded back wages to the respondent. No reasons are assigned for grant of back wages. It is by now a well settled law that when work is not done, remuneration is not to be paid and back wages cannot be granted mechanically. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> “10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle “no work no 'pay” as the respondents had actually not worked on the higher post to which they were

entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. On the facts of the case, back wages were granted mechanically without considering the facts and circumstances of the case and therefore I am of the opinion that in view of the settled law the Labour Court was not justified in granting full back wages to the respondent.

8. In the premises aforesaid, the award qua back wages is quashed and set aside. The rest of the award is confirmed. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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